IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

AMERICAN WASTE MANAGEMENT AND RECYCLING, LLC. Plaintiff, v. **CEMEX PUERTO RICO; CANOPY ECOTERRA CORP.; XYZ INSURANCE COMPANIES.** Defendants.	CIVIL NO.: 07- 1658 (JAF) BREACH OF CONTRACT; COLLECTION OF MONIES; and DAMAGES. JURY TRIAL DEMANDED

AWMR'S OPPOSITION TO
CO - DEFENDANT ECOTERRA'S MOTION TO DISMISS

TO THE HONORABLE COURT:

NOW APPEARS Plaintiff **AMERICAN WASTE MANAGEMENT AND RECYCLING**, **LLC,** (hereinafter, "AWMR") and through the undersigned attorneys, respectfully **STATES, ALLEGES** and **REQUESTS** as follows:

I. INTRODUCTION

On August 23, 2007, co-Defendant Ecoterra filed a Motion to Dismiss, alleging Plaintiff had no standing to sue because it was not authorized to business by the Puerto Rico Department of State. The motion further called for dismissal, with prejudice, of the present cause of action under the directives of said statute.

AWMR opposes said motion, for two reasons. First, AWMR did its due diligence with the Puerto Rico government agencies, and was instructed by the Puerto Rico Treasury Department

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(Hacienda) that there was no need for further registrations with any agency, since it was purchasing metal scrap for exportation and not selling it within Puerto Rico. AWMR registered its business with Hacienda before this lawsuit even commenced. AWMR also opposes said motion on a second ground, that the statutory construction allows for a foreign corporation to seek the certificate in question once the proceeding has been initiated. In fact, the statute *specifically* allows leeway for the Court to decide whether such a certificate is necessary, without the need for outright dismissal. AWMR respectfully informs this Honorable Court that this is a moot issue, as it has already obtained said certificate, so there is no need to dismiss or even stay the present case.

II. STANDARD

The standard of review for Fed R. Civ. P. 12(b)(1) is done pursuant to Pursuant to Federal Rule of Civil Procedure 12(b)(6), where a defendant may move to dismiss an action against him based solely on the pleadings for the plaintiff's "failure to state a claim upon which relief can be granted." Fed.R.Civ.P. 12(b)(6). In assessing a motion to dismiss, the Court accepts as true "the factual averments of the complaint and draw all reasonable inferences therefrom in the plaintiffs' favor." *Educadores Puertorriqueños en Acción v. Hernández*, 367 F.3d 61, 62 (1st Cir. 2004).

"Given the Federal Rules' simplified standard for pleading, '[a] court may dismiss a complaint only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations.'" *Rivera v. Centro Médico Del Turabo, Inc.* 2007 WL 2377043, *2 (D.Puerto Rico, 2007)(Fusté, C.J.); *quoting Swierkiewicz v. Sorema N.A.,* 534 U.S. 506, 514, 122 S.Ct. 992, 152 L.Ed.2d 992 (2002); *and Hishon v. King & Spalding*, 467 U.S. 69, 73, 104 S.Ct. 2229, 81 L.Ed.2d 59 (1984).

III. ARGUMENT

It has been well established for some time now that if a statute is clear, the Court need look no further into its interpretation, and shall give the words therein their plain, ordinary meaning. The United States Supreme Court has held that . . ."As in all statutory construction cases, we begin with the language of the statute." *Barnhart v. Sigmon Coal Co.*, 534 U.S. 438, 450, 122 S.Ct. 941, 151 L.Ed.2d 908 (2002). Furthermore, this Circuit has held that "[w]e have consistently held that when the plain meaning of a statute is clear, we are not to look beyond that text to discern legislative intent." *Palmieri v. Nynex Long Distance Co.*, 437 F.3d 111, 115 (1st Cir. 2006); *see also Bonilla v. Muebles J.J. Alvarez, Inc.*, 194 F.3d 275, 277 n. 2 (1st Cir. 1999) (When "the plain meaning of the statute resolves the issue *sub judice*, we need not rummage through the legislative history or search for other interpretive aids."); *Phillips v. Pembroke Real Estate, Inc.*, 459 F.3d 128 (1st Cir. 2006); and *Mason ex rel. Heiser v. Morrisette,* 403 F.3d 28 (1st Cir. 2005) *quoting Bryson v. Shumway*, 308 F.3d 79, 84 (1st Cir. 2002) ("If the meaning of a statute is clear, we enforce that meaning.").

Turning then to the statute at hand, while co-Defendant Ecoterra cites section (a) of the statute, which indicates that the company must have a certificate to do business, it conveniently omits section (c), which reads as follows:

> (c) Every court in the Commonwealth *may stay any proceeding initiated* by a foreign corporation, its successor or assignee until it is determined whether the foreign corporation, its successor or assignee must obtain a certificate of authorization. *If it is so determined*, the court may stay the proceeding until the foreign corporation, its successor or assignee obtains a certificate of authorization. 14 P.R. Laws Ann. § 3163. (emphasis added).

Therefore, contrary to what co-Defendant Ecoterra would have the Court believe, outright dismissal is neither mandatory nor even suggested in the statute. Instead, once a proceeding has begun, the process is two-step: first the Court first decides whether the certificate is necessary, and *may* stay the proceedings while it does so. Second, if the Court decides that a certificate is necessary, it *may* stay the proceedings until one is obtained. *See also,* Luis Mariano Negrón Portillo, *Derecho Corporativo Puertorriqueño*, at 484-85 (2d. ed. 1996)(stating that the Court may order a stay while deciding whether a certificate is necessary and while one is obtained). Nowhere in the statute does it speak of dismissal once the proceeding has begun, such as the case at bar. Quite the opposite; it speaks of actually *continuing* with the case while the Court decides the certificate issue. Since the standard is that a Court can dismiss a complaint only if it is clear that no relief could possibly be granted under any set of circumstances, this Honorable Court cannot and should not dismiss this case, as the statute specifically allows for continuation of the case. Jurisdiction is therefore more than evident, as is standing to sue, per the clear language of the statute.

Indeed, one must wonder why the statute would include such a provision allowing for a corporation to obtain the certificate once the proceeding has begun, if it meant to completely disallow such actions; the statute would have simply stated that the case had to be dismissed. Instead, the same statute allows for precisely just the opposite, in order to prevent injustice: it allows the corporate entity an opportunity to obtain a certificate once the action has begun, if the Court deems it necessary. Contrary to Defendants' assertion, therefore, dismissal is unjustified once the proceeding has begun and both jurisdiction and standing consequently exist.

AWMR further posits, however, that this is a moot issue, as it has already obtained from the Puerto Rico State Department such a certificate, which it is filing as *Exhibit 1* to this motion. Continuation of this case, and not dismissal, is therefore warranted under the plain reading of the wording statute. Furthermore, AWMR would like to point out that it has in no way attempted to deceive any authority in Puerto Rico, since as the Court can see, it had already registered with the Puerto Rico Treasury Department (Hacienda) and had obtained the corresponding merchant registration certificate long before this case began. *See Exhibit 2, Hacienda Certificate and accompanying certificate with Hacienda "received" stamp, dated April 27, 2007.* Surely registration with the taxing authority of the state is a logical and necessary step in the course of business, which speaks volumes about its willingness to legally carry out a company's business in the state. As a purchasing entity for exportation, AWMR was informed it did not require any additional registration other than with Hacienda. The fact that AWMR might have inadvertently failed to file its information with the State Department because of Hacienda advice does not deter from the fact that it had, in fact, registered with Hacienda and it obtained the necessary permits with that entity – the ultimate taxing authority no less – in order to legally carry out its business before this case began.

Interestingly enough, this very district has previously held that this specific statute did not preclude an unregistered foreign corporation from bringing a case in federal court, but rather only to filing its case before the Commonwealth of Puerto Rico state courts. *See General Council of Assemblies of God v. Fraternidad de Iglesia de Asamblea de Dios Autónoma Hispana*, *Inc., et al.*, 382 F.Supp.2d 315, 321 (D. Puerto Rico 2005). ("However, in no way does this section, or any other in the Law of Corporations of Puerto Rico, limit a corporation's access to a civil cause of action in federal court. Accordingly, Defendants' request for dismissal on the above-stated grounds is **DENIED** ") (emphasis in original).

WHEREFORE, AWMR respectfully requests that the Court **DENY** co-Defendant Ecoterra's Motion to Dismiss; and that it issue any further relief it deem just and proper under the law.

I HEREBY CERTIFY that on this same day, the present motion was filed with the Court's CM/ECF system, which will notify all counsel of record in this case.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 12th day of September, 2007.

INDIANO & WILLIAMS, P.S.C.
207 del Parque Street, Third Floor
San Juan, Puerto Rico 00911
Tel.: (787) 641-4545/ FAX: (787) 641-4544

By: s/ Jeffrey M. Williams
JEFFREY M. WILLIAMS
U.S.D.C.P.R. Bar No. 202414
jeffrey.williams@indianowilliams.com

By: s/ Ada Sofia Esteves
ADA SOFIA ESTEVES
USDC PR Bar No. 216910
sofia.esteves@indianowilliams.com